



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 21, 1999

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: DENNIS NEWINSKI FOR CONGRESS - MATTERS REFERABLE TO
THE OFFICE OF GENERAL COUNSEL

Audit Referral 99-24

On December 9, 1999, the Commission approved the Final Audit Report on Dennis Newinski for Congress. The audit report was released to the public on December 15, 1999. Two findings are being referred to your office:

II.A. Apparent Excessive contributions - Individuals

II.D. Reporting and Disclosure of Debts and Obligations

Should you have any questions regarding these matters, please contact Rhonda Simmons or Russ Bruner at 219-3720. Workpapers are available for your review if necessary.

Attachments as stated

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A. APPARENT EXCESSIVE CONTRIBUTIONS

Sections 441a(a)(1)(A) and (a)(2)(A) of Title 2 of the United States Code state, that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000 and that no multi-candidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

Sections 110.1(b)(5)(i) and (ii) of Title 11 of the Code of Federal Regulations state, in relevant part, that the treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if:

- the contribution was designated in writing for a particular election and the contribution, either on its face or when aggregated with other contributions from the same contributor for the same election, exceeds the limitation on contributions set forth in 11 CFR 110.1(b)(1);
- the contribution was designated in writing for a particular election and the contribution was made after that election and the contribution cannot be accepted under the net debts outstanding provisions of 11 CFR 110.1(b)(3);
- the contribution was not designated in writing for a particular election, and the contribution exceeds the limitation on contributions set forth in 11 CFR 110.1(b)(1); or
- the contribution was not designated in writing for a particular election, and the contribution was received after the date of an election for which there are net debts outstanding on the date the contribution is received.

Additionally, a contribution shall be considered to be redesignated for another election if the treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation and within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, any contribution made by more than one person shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing.

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Furthermore, a contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor.

If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions set forth in 11 CFR 110.1(b) or (d), as appropriate, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request a return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within 60 days from the date of the treasurer's receipt of the contribution, the contributors provide a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

The Audit staff reviewed DNFC's receipts data file, available check copies, deposit tickets and disclosure reports relating to contributions from individuals and identified 51 contributions from 36 individuals which exceeded the contribution limitation by \$33,075. Two excessive amounts totaling \$150 related to the general election. The remaining 49 contributions totaling \$32,925 related to the primary election. Many of these result from the receipt of amounts in excess of the primary election contribution limitation prior to the primary election, with no designation of the excessive amount to the general election. No evidence was found in DNFC's files that any attempt was made to obtain or maintain any written reattribution or redesignation documentation.

DNFC also served as Mr. Newinski's principle campaign committee for his campaign for the same office in the 1996 election and was audited for that election cycle. That audit report was released by the Commission on November 10, 1997. The report contained a finding that 16 individuals made 24 contributions that exceeded the contribution limitations by \$14,775. In the interim audit report it was recommended that absent a showing that the contributions were not in excess of the limitation, refunds be made or that the excessive amounts be reported as debts until funds were available to make the necessary refunds. DNFC's response did not provide such evidence, nor did it refund the contributions or list them on a debt schedule. Six of the contributors who made excessive contributions to the 1996 campaign also made excessive contributions to the 1998 campaign.

The review also identified apparent excessive contributions from state and local party committees and an excessive contribution from one political action committee. DNFC received \$10,710 from various state and local party committees for the Primary election. Of this amount, \$5,710 was excessive. The majority of contributions came from the 4th District Republican Committee. DNFC also received \$2,050 for the general election from the Taxpayer League PAC, a political committee that

had not attained multi-candidate status. This resulted in an excessive contribution of \$1,050. The total amount of excessive contributions from committees is \$6,760.

At the Exit Conference DNFC was provided a schedule of the excessive contributions from individuals and was advised that the receipt of excessive contributions was a material problem. The Treasurer stated that he was very surprised at the number of excessive contributors. No other comment was made. Subsequent to the Exit Conference, workpapers were provided to the DNFC listing the excessive party committee contributions and up-dating excessive contributions from individuals.

In the interim audit report the Audit staff recommended that DNFC provide evidence demonstrating that the contributions in question are not excessive. Absent such evidence, it was recommended that DNFC refund \$54,610 (\$39,835 from the 1998 election and \$14,775 from the 1996 election) and provide evidence of such refunds (copies of the front and back of the negotiated refund checks) for review. If funds are not currently available to make the necessary refunds, it was recommended that those contributions requiring refunds be disclosed as debts on Schedule D (Debts and Obligations) until such time that funds become available to make the refunds.

DNFC responded to the Interim Audit report on November 9, 1999, approximately two weeks after its response date of October 29, 1999. It should be noted that the original response date was October 14, 1999, but DNFC requested and received an additional 15 days in which to file its response. The response was comprised of revised debt schedules which listed all but two excessive contributions.

D. REPORTING AND DISCLOSURE OF DEBTS AND OBLIGATIONS

Section 434(b)(8) of Title 2 of the United States Code states, in part, that each report filed under this section shall disclose the amount and nature of outstanding debts and obligations owed by a political committee.

Sections 104.11(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. These debts and obligations shall be reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. A debt or obligation, the amount of which is \$500 or less, shall be reported as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first. A debt or obligation which is over \$500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date.

DNFC disbursements were reviewed to determine if it had correctly reported debts and obligations owed to vendors. An initial review of all disbursements revealed that approximately 46% of DNFC's disbursements related to administrative type expenses and were generally not reportable as debts. The remaining disbursements (54%), relate to 4 vendors who provided telemarketing and fundraising services and also provided printing and campaign materials. Although minimum recordkeeping requirements relating to these 4 vendors were met, more than 10% of the invoices relating to these payments were not available for review. Thus, the Audit staff's calculation of possible debts and obligations as relates to these vendors was limited to documentation available.

From this limited review, it was determined that debts and obligations totaling \$18,438 should have been reported on Schedules D for one of the telemarketing firms. DNFC had reported a total of \$6,057 for this firm on its 1997 Year End report. No other debt was reported until the 1998 year-end report, when \$8,518 was reported on line 10 of the Summary Page. No Schedule D was provided as to the breakdown of this debt, thus it was not possible to determine if any of it relates to the vendor mentioned above. During fieldwork and at the Exit conference, an itemized schedule was requested. To date, no schedule has been supplied. Absent this information, the Audit staff must assume that the remaining \$12,380 was not reported.

In addition, as was noted in finding II.A. above, DNFC was audited during the 1995/1996 election cycle. During that audit, it was determined that DNFC had received a total of 24 contributions from 16 contributors which resulted in excessive contributions totaling \$14,755. In the interim audit report a recommendation was made to either provide evidence that the contributions in question were not excessive, to make refunds to contributors, or if no funds were available, to report the refunds on a debt

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schedule. DNFC neither refunded the excessive contributions nor reported them as outstanding debts.

Based upon the information noted above the Audit staff's calculation of debt not reported on Schedules D totals \$27,135, (\$12,380 + \$14,755).

Subsequent to the end of fieldwork, DNFC was provided with a schedule detailing the debts that should have been reported.

In the interim audit report, the Audit staff made a recommendation that DNFC file amended Schedules D by report period for the calendar years 1997 and 1998.

DNFC filed amended Schedules D by calendar year and itemized the contributors who are due refunds for excessive contributions for both the 1995/1996 and 1997/1998 election cycles. However, for 1997, debts amounting to \$10,041 at year end, which had previously been reported, were not listed on these amended schedules or summary pages.

For 1998, DNFC filed amended Schedules D which carried forward 1995/1996 contribution refunds due as well as all but two excessive contribution refunds due noted during the current audit. In addition, a schedule was included for previously reported but unitemized debt for four vendors. Because amended schedules filed were for the entire year as opposed to per report period as recommended, \$12,380 in debt that should have been reported at the close of the Pre-Primary through Pre-General periods was not properly itemized or reported.

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